

CHAPTER XII

LEGAL GUIDE

RECORDING BY MINIATURE PHOTOGRAPHIC OR MICROFILM PROCESS

It is lawful for the clerk of the circuit court to record any and all instruments by miniature photographic process or microfilm process where the installation of such recording process is approved by the board of county commissioners. Any such process shall provide for an original and duplicate film copy of each instrument which by law such officer is required to record at length. The original copy shall be properly indexed and filed in a suitable container, folder or other device in the office where such instrument is recorded in such a manner that it will be easily accessible and readable by any interested person. The duplicate shall be preserved in a fireproof vault either within the courthouse where the clerk's office is located or in such other place as may be designated by the board of commissioners. [IC 36-2-17-4]

REMANDED CASES

A cause leaving one county on a change of venue and thereafter remanded to the county from which it was sent has the status the same as if it had never left the county in the first instance. Therefore, no per diems for trial dates are allowable upon disposition by the trial court.

CERTIFIED MAIL

In all cases where the law requires notices be sent by registered mail, it is permissible and legal for clerks to send such notices by certified mail as established by the United States Postal Service. [IC 1-1-7-1]

ANTI SECRECY LAW

Any person may inspect all public records and papers during regular business hours of the office. Such records that are declared by law to be confidential are excepted. All public proceedings, except such as are held as executive sessions, are open to every citizen. [IC 5-14-3]

CLERK'S CERTIFICATE UPON RECEIPT OF SESSION LAWS

The clerk is required to transmit to the Governor a certificate stating the day when the session laws were received. [IC 1-1-3-1]

FILING COMPLAINT - SUMMONS

A civil action shall be commenced by filing with the court a complaint and causing a summons to issue thereon. The clerk shall examine, date, sign and affix the seal to the summons and thereupon issue and deliver the papers to the appropriate person for service. (Trial Rule 3, 4-4.17)

NOTICE OF PUBLICATION

See Trial Rule 4.13 in the Indiana Rules of the Court.

LIS PENDENS RECORDS

Each clerk shall keep in the office a book called the "Lis Pendens Record," which shall be a public record. [IC 32-30-11-1]

NOTICE BY PARTY - CONTENTS - FILING

When a suit is commenced upon any bond payable to the state in any of the courts of this state or in a district court of the United States sitting in Indiana, the plaintiff in the case shall file with the clerk of the circuit court a written notice containing:

- (1) the title of the court; and
- (2) the names of all parties to the suit and a statement that it is upon an official bond. [IC 32-30-11-2]

When a person commences a suit:

- (1) in any court of this state or in a district court of the United States sitting in Indiana;
- (2) whether by complaint as plaintiff or by cross-complaint as defendant; and
- (3) to enforce any lien upon, right to, or interest in any real estate upon any claim not founded upon:
 - (a) an instrument executed by the party having the legal title to the real estate, as appears from the proper records of the county, and recorded as required by law; or
 - (b) a judgment of record in the county wherein the real estate is located, against the party having the legal title to the real estate, as appears from the proper records;

the person shall file, with the clerk of the circuit court in each county where the real estate sought to be affected is located, a written notice containing the title of the court, the names of all the parties to the suit, a description of the real estate to be affected, and the nature of the lien, right, or interest sought to be enforced against the real estate. [IC 32-30-11-3]

The clerk shall record a notice filed in the Lis Pendens Record and shall note upon the record the day and hour when the notice was filed and recorded. [IC 32-30-11-4]

CLERK TO INDEX

It is the duty of the clerk to index the record by the names of each party whose interest in the real estate might be affected by the suit, attachment, or execution. [IC 32-30-11-6]

SATISFACTION OF LIEN

It is the duty of the clerk to enter in the "Lis Pendens Record" a satisfaction of the lien, right or interest on order of the court rendering judgment in final determination of the suit. [IC 32-30-11-7]

DISMISSAL OR SATISFACTION OF ATTACHMENT - CERTIFICATE - FEE

Whenever any such attachment shall be dismissed, judgment satisfied or such execution shall be satisfied without sale, or upon redemption within the time allowed by law after a sale upon execution, it shall be the duty of the clerk of the court, from which such attachment or execution was issued to make a certificate of such dismissal or satisfaction, to be entered upon the "Lis Pendens Record" if the same is in the clerk's office, or to be recorded in the "Lis Pendens Record" of the proper county where such real estate is situated; and upon such certificate being entered or recorded, such real estate shall be discharged from the lien of such attachment or execution. [IC 32-30-11-8]

CLERK STRIKING

In a change of venue, if either of the parties fail to strike off the names of the adjoining counties submitted by the court within the time limited, the clerk of the court shall strike off such names for such party. [IC 34-35-2-4]

PARTITION OF REAL ESTATE - TRANSCRIPT

In all actions for partition and in all cases where the transfers to the parties are made by judgment only and not by deed, the clerk shall make a transcript of the judgment showing the transfer under his/her hand and seal of the court, showing the reference to the order book and page in which the judgment is entered and deliver the same to the auditor of the county wherein such real estate is located. The auditor shall make the transfer and enter it in the transfer book, noting the transfer on the back of the transcript, and deliver it to the recorder who shall record the same in the record of deeds. The fee for the clerk, auditor and recorder shall be paid by the person entitled to the real estate which shall be taxed by the court as a part of the costs in the proceedings. There shall be no more than one transcript of any such judgment made out and recorded as aforesaid in any case whatever. [IC 6-1.1-5-6]

TRANSCRIPTS OF RECORDS

Certificates to transcripts of records made by the clerk of the court must be attested by the seal of the court. (See *Brunt v. State ex rel. French* (1871), 36 Ind. 330; *Conkey v. Conder* (1894), 137 Ind. 441, 37 N. E. 132; *Johnson v. Johnson* (1901), 156 Ind. 592, 60 N. E. 451; *State ex rel. Miller v. Webster* (1901), 157 Ind. 508, 62 N. E. 8; *Comstock v. Stoner* (1903), 30 App. 529, 66 N. E. 501; *Hurst v. Mann* (1912), 51 App. 466, 99 N. E. 828.)

PRAECIPE FOR EXECUTION AND FEE BILL NECESSARY

No execution shall be issued except on written praecipe of a party to a suit, his/her representatives or assigns or attorney of record; no fee bill shall be issued unless ordered by the person to whom such fees are due and the clerk shall receive nothing for any fee bill issued for his/her own fee. [IC 34-55-2-8]

This section does not prohibit the clerk from issuing fee bills for the collection of costs. The provisions of this section refer to fees due other persons.

EXECUTION NOT ISSUED AFTER TEN YEARS - UPON LEAVE OF COURT - NOTICE

An execution cannot be issued after ten years from the entry of judgment except on motion and leave of the court and upon notice given to the adverse party. [IC 34-55-1-2]

EXECUTION MAY ISSUE ON SUNDAY

An execution may be issued and executed on Sunday whenever an affidavit shall be filed by the plaintiff, or another person on the plaintiff's behalf, stating that the plaintiff has fear and reason to believe that he/she will lose his/her judgment unless process issue on that day. The clerk shall endorse on such execution that the defendants are not privileged from service on Sunday. [IC 34-55-1-15]

EXECUTION DOCKET

The clerk is required to keep an execution docket in which the clerk shall enter all executions as they are issued specifying in proper columns the names of the parties, amounts of judgment and the interest due at the time of issue, and the costs. The clerk shall prepare an additional column in which the clerk shall enter the return of the sheriff. [IC 33-32-3-5]

BAIL FOR STAY OF EXECUTION

Bail may be taken and approved by the clerk, and the recognizance entered of record, at any time before the term of the stay of execution expires. The undertaking shall be for the payment of the judgment, interest and costs that may accrue at or before the expiration of the term of the stay of execution. The recognizance shall be written immediately following the entry of the judgment and signed by the bail. [IC 34-55-2-1]

CLERK TO NOTIFY SHERIFF

If bail is entered after an execution has been issued, the clerk shall immediately notify the sheriff and he/she shall return the execution forthwith. [IC 34-55-2-2]

EXPIRATION OF STAY - JOINT EXECUTION SHALL ISSUE

At the expiration of the stay it shall be the duty of the clerk to issue a joint execution against the property of the judgment debtors and replevin bail. [IC 34-55-2-9]

LIS PENDENS RECORD - WRITTEN NOTICE TO BE FILED BY SHERIFF OR CORONER

When a sheriff or coroner seizes upon real estate or levies upon real estate by order of a court, a copy of the sheriff's or coroner's written notice of attachment or levy shall be filed with the clerk who shall record it in the Lis Pendens Record. The sheriff or coroner is allowed a fee of fifty cents (\$0.50) to be taxed as costs for making and filing the notice. However, the sheriff or coroner is not required to file the notice until the attachment or execution plaintiff provides the money to pay the clerk for filing and recording the notice. [IC 32-30-11-5]

LIS PENDENS RECORD - DISMISSAL OR SATISFACTION OF ATTACHMENT - CERTIFICATE

The matter of redeeming property after the written notice of attachment or levy is recorded by the clerk and the duties of the clerk thereafter relating to making the record of dismissal or satisfaction in the Lis Pendens Record must be strictly followed in accordance with the provisions of IC 32-30-11-7 and IC 32-30-11-8. The clerk is generally guided in the legal procedure by the attorney representing the redeemer.

LIS PENDENS RECORD OF DISMISSALS AND SATISFACTION, LIEN OR ATTACHMENTS TO BE INDEXED

All entries in relation to dismissals or satisfaction of liens or attachments shall be indexed in the Lis Pendens Record in the names of the judgment plaintiffs, the defendant owning the same and also in the name of the defendant at the suit of said plaintiffs. [IC 32-30-11-6]

BAIL OR ESCROW IN CONTEMPT PROCEEDINGS

Whenever the sheriff accepts bail or escrow for and in behalf of a person taken into custody on an order of attachment in contempt proceedings, the escrow shall be deposited with the clerk of the circuit court in an amount fixed by the court. The amount of the escrow shall only be paid out upon order of the court that issued the writ of attachment. [IC 34-47-4-2]

ORDER OF ATTACHMENT ISSUED BY CLERK - APPROVAL OF BOND

The clerk is required to issue an order of attachment to the sheriff when a proper affidavit is filed in the office of the clerk and the plaintiff has executed a written undertaking with sufficient surety to be approved by the clerk. [IC 34-25-2-4; IC 34-25-2-5; IC 34-25-2-6]

EJECTMENTS - AFFIDAVITS FOR POSSESSION – CLERK'S ORDER TO SEIZE

In all actions for ejectment, or for the recovery of the possession of real estate, the plaintiff may file an affidavit with the clerk stating that the plaintiff is entitled to the possession of the property described in the complaint, that the defendant unlawfully retains possession thereof, the estimated value of the property and the estimated rental value thereof. Upon filing of such affidavit, the clerk shall issue an order for a hearing to show cause why the defendant should not be taken from the property. [IC 32-30-3-1; IC 32-30-3-2]

QUIET TITLE PROCEEDINGS - NOTICE BY CLERK

Upon filing of a complaint and affidavit to quiet title, and upon filing an affidavit for publication of notice as now required by law, the clerk will publish notice of the filing and pendency the proceeding; the date the proceeding will take place. The notice shall include all names and the necessary information as provided by law. [IC 32-30-3-14]

These notices are generally prepared by the attorney bringing the action and will be in conformance with the requirements of the statutes.

RECORDING DECREE IN THE RECORDER'S OFFICE

The clerk of the court wherein such suit has been had shall make a certified copy of the decree and deliver the same to the recorder of such county for record. The fees for the transcript together with the fees for recording the same in the recorder's office shall be taxed as a part of the costs of such action. [IC 32-30-3-17]

RECEIVERSHIPS - RECORD OF STATEMENTS

It shall be the duty of the clerk to keep a record suitable to enter and record statements of assets and liabilities. [IC 32-30-5-12]

All claims against the assets in the hands of the receiver are to be filed by the receiver with the clerk. It is the duty of the clerk to record such claims with the statements in the book provided for that purpose thus making a complete record of the same. [IC 32-30-5-13]

REPLEVIN ACTION

When any personal goods are wrongfully taken or unlawfully detained from the owner or person claiming the possession thereof, or when taken on execution or attachment, are claimed by any person other than the defendant, the owner or claimant may bring an action for the possession thereof. When a delivery is claimed, an affidavit must be made by the plaintiff, or by someone in the plaintiff's behalf, in the form as now provided by law. [IC 32-35-2-1; IC 32-35-2-3]

ORDER FOR DELIVERY

When such affidavit is filed with the clerk, the clerk shall issue an order for a time fixed by the judge directing the defendant to appear at a hearing regarding disposition of the above-mentioned property. [IC 32-35-2-5]

BIRTHS - PROCEEDINGS TO ESTABLISH TIME AND PLACE

Residents and nonresidents of the State of Indiana may file their verified petition to establish a public record of the time and place of birth as provided by IC 34-28-1-1 and IC 34-28-1-2.

FORMS TO BE FURNISHED

It shall be the duty of the clerk to provide the forms for such petition in the same manner as other forms are now provided by law. [IC 34-28-1-3]

NOTICE TO BE GIVEN

Upon filing the application, the applicant shall give notice thereof by one insertion in some qualified newspaper of general circulation. The form of notice shall be in the form as provided by law. The cost of the notice shall not exceed one dollar and fifty cents (\$1.50). In the event the notice cannot be published for such fee, notice shall be given by posting at a door of the courthouse and it is the duty of the clerk to make such posting and file proof thereof. [IC 34-28-1-4]

RECORD TO BE KEPT BY CLERK - BIRTH CERTIFICATES

In addition to the requirement for keeping a birth certificate record, the clerk shall also send a certified copy of the judgment decree to the Division of Vital Records, State Department of Health, Indianapolis, Indiana. Such judgment and decree shall be considered to be a delayed certificate of birth under the provisions of IC 16-37-2. [IC 34-28-1-9]

DISMISSAL FOR FAILURE TO PROSECUTE

If the applicant fails to prosecute his/her action within 120 days after filing the petition, the court shall dismiss the application and it shall be the duty of the clerk to destroy all such applications immediately subsequent to such dismissal. [IC 34-28-1-11]

JURIES - GRAND AND PETIT HOW DRAWN

During the month of December, and at such other times as the judge deems necessary, the judge of any court of record in which jury trials are had shall by written order direct the clerk of the circuit court to draw grand jurors or petit jurors from the names selected by the jury commissioners, which names shall be drawn by the clerk in the presence of the jury commissioners, in a number equal to the number of jurors to be summoned according to the judge's orders. The names of jurors for each court having criminal jurisdiction shall be drawn first.

At the time of the drawing, the clerk shall enter in the order book of the court a list of the names drawn, in the order in which they were drawn. The clerk shall attach their certificate to attest to the accuracy of the list. The clerk shall issue venires for such jurors as the courts direct. However, the jurors called to service shall be identified long enough before the trial or grand jury session to permit counsel to study their backgrounds.

Notice to or summons of persons for jury duty shall be served by the clerk of the circuit court upon order of the court.

The sheriff or bailiff shall call the jurors to the jury box in the same order in which their names were drawn. Jurors shall serve for three (3) months, or for a shorter period if a shorter period is specified in the judge's written order.

The provisions of this section shall be construed to supplement IC 34-36-2, and other statutory provisions for special juries, for juries by agreement, for juries from other counties, for struck juries, and for special venires. This section shall be construed liberally, to the effect that no indictment shall be quashed, and no trial, judgment, order, or proceeding shall be reversed or held invalid on the ground that the terms of this section have not been followed, unless it appears that the noncompliance was either in bad faith or was objected to promptly upon discovery and was probably harmful to the substantial rights of the objecting party.

The judge of any court having criminal jurisdiction may, upon due cause shown by petition of the prosecuting attorney of the judicial circuit, extend the terms of the members of the grand jury then convened for an additional term of three (3) months or more, as requested by the prosecuting attorney. The terms of the members of any grand jury may be so extended for successive periods of increments of three (3) months or more, to a total length of no more than two (2) years. [IC 35-34-2-13]

The judge of any court having criminal jurisdiction may, upon due cause shown by petition of the prosecuting attorney of the judicial circuit, order the clerk of the courts, or jury commissioner as defined in IC 33-4-5.5-4(b), to draw the names of competent persons to be summoned to serve on a special grand jury, which shall serve in addition to the grand jury regularly summoned and convened pursuant to law.

A special grand jury has the powers and duties of a grand jury prescribed by law.

The members of the special grand jury serve terms of three (3) months or more, as requested by the prosecuting attorney. The terms of members of a special grand jury shall be extended for the same period of time and in the same manner in which the terms of grand jury members may be extended under section 13 of this chapter. [IC 35-34-2-14]

When names of grand jurors are ordered drawn to be summoned under section 14 of this chapter, the judge shall specify the number of names to be drawn, and shall enter an order in sufficient time before the grand jury session to permit counsel to know and investigate the panel of special grand jurors. The order of names listed in the panel and called for service and entered in the order book of the court shall be the same as provided in IC 33-28-4-9 or IC 33-28-6, as may be applicable. The clerk shall issue venires or summonses for such jurors as the courts may direct. The sheriff or bailiff shall then call the special grand jurors to the jury box in the same order as that in which their names were drawn from the box and certified thereto. [IC 35-34-2-15]

JURORS - BOX TO BE FURNISHED BY CLERK - CLERK TO KEEP POSSESSION OF

The clerk shall furnish a box in which names of prospective jurors may be deposited by the jury commissioners. The box containing the names therein, and locked, shall be delivered to the clerk. The key shall be retained by one of the commissioners of opposite politics from the clerk. [IC 33-28-4-3; IC 33-28-4-5]

CLERK TO RECORD OATH OF ATTORNEYS - TO FURNISH COURT WITH LIST

Every person before proceeding to discharge the duties of an attorney shall take an oath to support the Constitution of the United States and of this state, and that he/she will faithfully and honestly discharge the duties of an attorney at law, which oath shall be entered in the order book of the court. At each term of court, the clerk will furnish a list of names to the court of all attorneys having business in such court. [IC 33-43-1-1; IC 33-43-1-2]

As a ready reference and a method of convenience, it would be well for each clerk of the circuit court to keep a record or roll of the names of attorneys admitted to practice law in their respective courts. The register should show the name, date of admission and any other pertinent information necessary for a complete record. Such names should be filed in alphabetical order. Such a record would be very valuable and convenient in all clerks' offices, more especially in the more populous counties.

CERTIFICATE OF AUTHORITY OR ACKNOWLEDGMENT - FEE

The clerk is often requested to attest the official character of persons who affix their seal and signature to conveyances or other instruments. This is frequently true when a notary public affixes their jurat to an instrument.

In all cases where, by law, the certificate of the clerk of the proper county is required to accompany the acknowledgment, the said certificate shall set forth that the officer before whom said acknowledgment was taken was at the time, lawfully acting as such and that the clerk's signature to the certificate of acknowledgment is genuine. [IC 32-21-2-9]

The clerk's fee for this service is one dollar (\$1.00) and is the property of the county. [IC 33-37-5-3]

TENDER OF MONEY

When an action is begun in court where money has been tendered in settlement of a demand and the tender refused by the party or parties, the money may be brought into court to keep the tender good. The clerk, in his/her official capacity, shall accept such tender and enter it in the proper records to the credit of the person for whom it is intended. The tender is an item of trust. The clerk must be particularly cautious not to disburse the money until the cause in litigation is finally adjudicated by judgment by the court or jury or upon dismissal by the plaintiff. The clerk must never refund the tender to the party who paid it unless by judgment of the court it is so ordered and the amount determined. When money is tendered into court, the clerk is responsible for the money. The disbursement of the tender, except by judgment or order of the court, may result in an action against the clerk or on his/her official bond.

If the court or jury trying the cause finds that less amount is due on the demand than that tendered and brought into court, the plaintiff shall receive no more of the sum paid into court than the court or jury finds is due the plaintiff on the demand. [IC 34-54-9-2]

FAILURE TO PAY OVER FEES COLLECTED

An officer who fails to pay the amount due from him/her into the county treasury shall forfeit to the state a sum equal to the amount of fees actually collected during the quarter, to be collected by the prosecuting attorney of the county and paid into the common school fund of the county. [IC 36-2-7-17]

WITNESSES FOR GRAND JURY

The clerk is required to issue subpoenas for witnesses to appear before any regular session of the grand jury in the manner provided by law for the issuance of such. [IC 35-34-2-5]

The clerk may be required to draw names of competent persons to serve on the grand jury. [IC 35-34-2-14]

INDICTMENT - DUTY OF CLERK

Whenever an indictment or information is filed, the clerk of the court shall mark the date of filing on the instrument and the indictment or information shall be recorded in a record book kept for that purpose by the clerk. The clerk shall make available to the defendant, or the defendant's attorney, a copy of the indictment or information.

Whenever an indictment or information is filed and the defendant has not been arrested or otherwise brought within the custody of the court, the court shall issue a bench warrant for the arrest of the defendant.

The court may order that the indictment or information be sealed. If a court has sealed an indictment or information, no person, may disclose the fact that an indictment or information is in existence or pending until the defendant has been arrested or otherwise brought within the custody of the court. A violation of this subsection is punishable as a contempt. [IC 35-34-1-1]

WARRANT OR SUMMONS ISSUED BY CLERK

Warrants or summons as the court may direct are issued by the clerk upon order of the court in accordance with provisions of the law governing the issuance thereof.

RECOGNIZANCE FILED WITH AND RECORDED BY CLERK

Every recognizance taken by any peace officer must be delivered to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance and it shall have the same effect as if taken in open court. [IC 35-33-8.5-2]

RECOGNIZANCE - RECORDING A LIEN - REAL ESTATE IN OTHER COUNTIES -
RELEASE OF LIENS - FEES OF CLERK - JUDGMENT UPON FORFEITURE

All recognizances taken to secure the appearance of a defendant in the criminal or circuit court shall be immediately recorded by the clerk of said court in the order book and entered in the judgment docket of said court and from the date of recording shall be a lien on all the real estate in such county owned by the several obligors.

If the real estate of any one or more of the obligors be situated in a county other than in that where the prosecution is pending, it shall be the duty of the clerk, upon order of the court and as such court may direct, to immediately transmit to the clerk of the court of the county where such real estate is situated, a certified copy of the recognizance.

The clerk of the court to which the transcript is sent shall immediately record the recognizance upon the judgment docket of the circuit court of such county in the same manner as required of the clerk wherein the cause is pending. And the same shall be a lien on real estate owned by the obligors in such county in the same manner and to the same extent as if the lands were situated in the county where the cause is pending.

The clerk to which such document is transmitted shall be entitled to charge and collect one dollar (\$1.00) to be paid by the defendant or the obligors, which sum shall accompany the certified copy.

Upon the final determination of said cause and the full and complete compliance with all requirements and conditions of the recognizance, the court shall order the release of all liens created by the recognizance and the clerk shall transmit to the clerk of the circuit court of each county wherein said lien may have been recorded, and such order when recorded in any of said counties shall operate as a full and complete release of all lands of such obligors situated in such county.

The fee of any clerk for recording any such release shall be fifty cents (\$.50), which fee shall be paid by the obligor and shall accompany the order of release when transmitted by the clerk.

Judgment, if any, rendered in the event of a forfeiture of any recognizance, shall bind and be a lien upon the real estate of the principal and sureties within the county in which such judgment is rendered. A transcript of the judgment shall also be filed in the office of the clerk of each other county, if any, where such recognizance may have been recorded and when recorded, shall be a lien upon the lands of any obligor therein situated in like manner as in the county of origin jurisdiction. Should such surety be relieved from liability from such bond as by law provided, such clerk shall proceed to release from the lien provided herein all his/her such real estate as though such case had been completed and the case finally determined. [IC 35-33-8.5-9]

FINES OR COSTS - DEFAULT

Whenever the court imposes a fine or costs, it shall conduct a hearing to determine whether the convicted person is indigent. If the convicted person is not indigent, the court shall direct that the person pay: (1) The entire amount at the time sentence is pronounced; (2) the entire amount at some later date; (3) specified parts at designated intervals; or (4) at the request of the person, commitment of the person to the county jail for a period of time set by the court in lieu of a fine. If the court orders a person committed to jail, the person's total confinement for the crime that resulted in the conviction must not exceed the maximum term of imprisonment prescribed for the crime under IC 35-50-2 or IC 35-50-3.

Upon any default in the payment of the fine: (1) The county attorney may bring an action on a debt for the unpaid amount; or (2) the court may direct that the person, if he/she is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars (\$20.00) for each twenty-four (24) hour period he/she is confined, until the amount paid plus the amount credited equals the entire amount due. [IC 35-38-1-18]

COUNTY AND TOWNSHIP OFFICERS' BONDS - WHEN APPROVED BY CLERK

Where there is no existing law for the approval of county and township officers' bonds, when such officers are required to give bond, it is the duty of the clerk to approve the same if executed with sufficient surety and endorse the approval thereon. [IC 5-4-1-8]

NEW BOND - NOTICE BY CLERK

Whenever the clerk of the circuit court with jurisdiction in the county where an officer resides determines or a voter eligible to vote for an officer files an affidavit with the clerk stating that:

- (1) the sureties for the official bond of an officer have ceased to do business in Indiana;
- (2) the security for an official bond of an officer has become insufficient; or
- (3) the penalty has become inadequate to secure the faithful performance of the duties of an officer's office by the diminution of the penalty by suit, an increase of liabilities from the enactment of statutes after the commencement of an officer's term, or other sufficient cause:

the clerk shall issue a writ to the sheriff commanding the officer to appear before the judge of the circuit court with jurisdiction in the county in which the officer resides ten (10) days after the service of process and answer the complaint. The summons shall be served, return made, and fees charged as in the case of other summons. [IC 5-4-4-1]

On the return of the process served, the clerk shall immediately notify the judge of the time and place of hearing the complaint and the judge shall attend thereupon. [IC 5-4-4-2]

ADMINISTRATION OF OATH

Clerks of the circuit courts are authorized to administer oaths pertaining to all matters where an oath is required. [IC 33-42-4-1; IC 33-32-2-5]

COMPENSATION - DIVISION OF PENALTY

It is a Class B misdemeanor for any deputy or assistant to divide the compensation with the officer or any other person in consideration of such employment or for the officer or other person to accept any such division of compensation. [IC 36-2-8-6]

SESSION LAWS - RECEIPT BY CLERK - DISTRIBUTION

Immediately upon receipt of the session laws by the legislative council, one (1) copy of these session laws shall be delivered by certified mail to each of the clerks of the counties of the state.

It is the duty of each county clerk, upon delivery to the county clerk of the copy of the session laws referred to in the preceding paragraph, to send to the Governor by first class mail a certificate under the seal of the clerk's office showing the date of the clerk's receipt for such laws, as provided in IC 1-1-3-1.

The legislative council shall furnish additional copies of the session laws to each county clerk sufficient to provide copies for local officials as directed by the legislative council.

The legislative council shall distribute copies of the session laws to all state elected officials and state governmental agencies and shall fill requests from official agencies in other states. When such distribution is completed, additional copies of the session laws may be sold by the Indiana Legislative Services Agency at the cost set by statute. All moneys so collected shall be turned over to the Treasurer of State. [IC 2-6-1.5-4]

UNCLAIMED FEES - REPORT TO ATTORNEY GENERAL

It is the duty of the clerk to report all property of whatsoever kind or character which remains unclaimed in the office for a period of five years unless the unclaimed money is related to child support to the Attorney General of the state. Unclaimed child support funds should not be held more than ten years. The provision of this statute covers any item of trust. [IC 32-34-1-26]

DELIVERY OF UNCLAIMED PROPERTY TO ATTORNEY GENERAL

On the day the report of unclaimed property is filed with the Attorney General, the clerk shall deliver or pay to the Attorney General the property described in the report with few exceptions as listed in IC 32-34-1-27.

SUCCESSOR TO RECEIVE BOOKS, RECORDS AND PAPERS

At the expiration of his/her term, the clerk shall deliver to his/her successor all the records, books and papers belonging to the office. [IC 33-32-3-8]

DEPARTMENT OF WORKFORCE DEVELOPMENT (DWD) WARRANTS - DUTY OF CLERK - PENALTY FOR FAILURE TO ABIDE - REMITTANCE

Upon receipt of a warrant for the collection of delinquent contributions due the Department of Workforce Development, the clerk shall, within five (5) days, enter the warrant in the judgment docket in the same manner as other judgments are entered, which shall constitute a lien upon the title and interest in the real and personal property of the employing unit against which it is issued. After making the proper entry in the judgment docket, the clerk will return the original warrant to the department. [IC 22-4-29-7]

If the clerk fails to record and issue the warrant, to the department, within five (5) days after it has been received, the clerk shall forfeit to the State of Indiana for each failure the sum of twenty dollars (\$20.00). [IC 22-4-29-8]

Within one hundred twenty (120) days from the date of receipt of the warrant (or immediately after service if the warrant is fully satisfied or found to be wholly uncollectible) the sheriff shall return it, together with the money collected, less fees and costs payable to the department, and make his/her return thereon. [IC 22-4-29-8]

"Costs" as referred to in this subsection includes the fees of the clerk and sheriff as are specifically provided for and costs of storage, appraisal, publication, and other necessary and properly chargeable expenses incurred in the sale of property on execution. The costs herein specifically prescribed for the clerk and sheriff shall be as follows:

- (1) Clerk's fee of three dollars (\$3.00) to be charged on the warrant and paid to the clerk for recording the warrant.
- (2) Sheriff's fee of:
 - (a) six dollars (\$6.00) to be charged on the warrant and paid to the sheriff in every instance in which the warrant has been duly and properly served and the schedules and affidavits hereinafter provided for have been executed and signed; or
 - (b) ten dollars (\$10.00) for sale of property on execution or decree, including making a deed or certificate of sale, to be charged on the warrant.

The fees and charges provided in IC 22-4-29-8 for the clerk and sheriff shall be the property of the clerk and sheriff, and, excepting additional payments to the sheriff provided for in this section, shall be the only fees and charges payable for their services relating to the warrants herein and shall be in lieu of all fees and charges provided for in other statutes for services relating to recording and serving of warrants and levying of executions, whether such other statutes relate to clerks, sheriffs, governmental units, or subdivisions thereof. Such costs shall be charged against the employing unit and collected from it by the sheriff. [IC 22-4-29-9]

In case the amount collected is sufficient to satisfy the entire amount of the warrant and all costs thereon, the sheriff shall retain an amount equal to ten percent (10%) of the assessment in addition to the fees provided in section 8 of this chapter. If such amount is not collected in full, the sheriff shall retain an amount equal to five percent (5%) of the amount collected.

However, in instances wherein the sheriff makes no collection upon a warrant and it has been returned to the department as uncollectible and the warrant is thereafter paid voluntarily in whole or in part by the employing unit to the clerk or to the department, the sheriff shall not be entitled to either of the payments mentioned in subsection (b), and the damages assessed in the warrant shall be deposited in the unemployment insurance benefit fund.

The return by the sheriff to the department of the warrants shall be made monthly on or before the fifth day of the month. All money so returned to the department shall be receipted for by the department and its endorsement upon the check transmitted by the sheriff shall be conclusive evidence of such payment by the sheriff and no other receipt shall be necessary.

If a warrant is not satisfied within one hundred twenty (120) days specified in section 8 of this chapter, nothing herein shall operate to prevent the department from issuing subsequent warrants upon the identical amount of the unpaid assessment. Subsequent warrants shall not be recorded by the clerk, and no fees shall be chargeable by the clerk. Upon any subsequent warrant, the sheriff shall be entitled to a sum for mileage equal to that sum per mile paid to state officers and employees, with the rate changing each time the state government changes its rate per mile, but shall not be entitled to any other fee if the same has been paid the sheriff for services upon the original warrant, except that in case collection is made in part or in full with respect to any such subsequent warrant, the sheriff is entitled to the five percent (5%) or ten percent (10%) as provided in section 9(b) of this chapter.

In every instance in which the sheriff shall return any warrant unsatisfied, the sheriff shall attach to the sheriff's return an inventory or schedule of all the property, real and personal, tangible and intangible, of the employing unit, sworn to by the employing unit, and describing the real estate by metes and bounds and the personal property by separate items, specifically noting thereon all encumbrances, or in lieu thereof a sworn statement by the employing unit that it possesses no property whatever.

GROSS INCOME TAX WARRANTS - CLERK TO ENTER

When the Department of State Revenue issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. The department may also send the warrant to the sheriff of any county in which the person owns property and direct the sheriff to file the warrant with the circuit court clerk:

- (1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer; and
- (2) no later than five (5) days after the date the department issues the warrant.

When the circuit court clerk receives a tax warrant from the department or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

- (1) The name of the person owing the tax.
- (2) The amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.
- (3) The date the warrant was filed with the clerk.

When the entry is made, the total amount of the tax warrant becomes a judgment against the person owing the tax. The judgment in favor of the state that attaches to all the person's interest in any:

- (1) chose in action in the county; and
- (2) real or personal property in the county

excepting only negotiable instruments not yet due.

A judgment obtained under this section is valid for ten (10) years from the date the judgment is filed. The department may renew a judgment for additional ten (10) year periods by filing an alias tax warrant with the circuit court clerk of the county in which the judgment previously existed.

A judgment in a county may be released by:

- (1) the department or by the county sheriff after the judgment, including all accrued interest to the date of payment, has been fully satisfied; or
- (2) the department if the department determines that the tax assessment or the issuance of the tax warrant was in error.

If the department determines that the filing of a tax warrant was in error, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the warrant was filed. The department shall mail the release as soon as possible but no later than seven (7) days after:

- (1) the determination by the department that the filing of the warrant was in error; and
- (2) the receipt of information by the department that the judgment has been recorded under subsection (d).

If the department determines that a judgment described in subsection (h) is obstructing a lawful transaction, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the judgment was filed immediately upon making the determination.

A release issued must state that the filing of the tax warrant was in error. Upon the request of the taxpayer, the department shall mail a copy of a release issued to each major credit reporting company located in each county where the judgment was filed.

The commissioner shall notify each state agency or officer supplied with a tax warrant list of the issuance of a release.

If the sheriff collects the full amount of a tax warrant, the sheriff shall disburse the money collected and then release the judgment. If a judgment has been partially or fully satisfied by a person's surety, the surety becomes subrogated to the department's rights under the judgment and the sheriff may not release the judgment until the surety's rights under the judgment have been satisfied by the person. If a sheriff releases a judgment:

- (1) before the judgment is fully satisfied;
- (2) before the sheriff has properly disbursed the amount collected; or
- (3) after the sheriff has returned the tax warrant to the department;

the sheriff commits a Class B misdemeanor and is personally liable for the part of the judgment not remitted to the department. [IC 6-8.1-8-2]

The county sheriff of a county shall attempt to levy on and collect a judgment on a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment plus the accrued interest to the date of the payment. The sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax warrants.

A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff may engage an auctioneer to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses and the judgment arising from the tax warrant are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for judgments collected that arose from tax warrants. On or before the fifth day of each month the sheriff shall disburse the money in the tax warrant judgment trust account in the following order:

- (1) The sheriff shall pay the department the part of the collections that represents taxes, interests, and penalties.
- (2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.
- (3) Except as provided in subdivision (4), the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added.
- (4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.

After the period described has passed, the sheriff shall return the tax warrant to the department. However, if at the end of this period the sheriff is in the process of collecting the judgment arising from a tax warrant in periodic payments of sufficient size that judgment will be fully paid within one (1) year after the date the judgment was filed, the sheriff may keep the tax warrant and continue collections. When the tax warrant is returned, the department may exercise its collection powers alone, or it may allow the sheriff to continue collections in conjunction with the department. If the department and the sheriff engage in simultaneous collection efforts, the sheriff may retain for disbursement under subsection (c) only the part of the ten percent (10%) collection fee that is applicable to the part of the collections for which the sheriff is responsible. The department shall retain the rest of the collection fee.

Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

The following applies only to the sheriff of a county having a consolidated city or second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter shall be divided as follows:

- (1) The sheriff may retain for disbursement under subsection (c) forty thousand dollars (\$40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar (\$40,000) amount.

- (2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the sheriff's department's pension trust fund.
- (3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the county general fund. [IC 6-8.1-8-3]

SERVICE OF WRITTEN NOTICE

Prior to selling mortgaged property, the Sheriff at the time of placing the first advertisement, shall serve a copy of the written or printed notice of sale upon each owner of real estate and charge ten dollars (\$10.00) to one owner and three dollars (\$3.00) to each additional owner. [IC 32-29-7-3]

LICENSE TO CONDUCT SALES

Any applicant for a license to conduct a distress sale under the provisions of IC 25-18-1, shall file an application for a license with the clerk of the circuit court. [IC 25-18-1-3]

The application shall be in such form and contain such information as set out in IC 25-18-1-3. This application shall be made in writing and under oath, at least ten (10) days prior to the opening date of the sale. A detailed and complete inventory of all goods to be sold shall be filed with the application. The form of inventory is prescribed by the act.

The clerk shall note on the license the effective date of the sale which shall not be less than ten (10) nor more than fifteen (15) days from the date of the issuance of the license. The license shall expire and be void sixty (60) days after the effective date unless renewed in accordance with the requirements and limitations of Section 9. A renewal license shall expire thirty days from its effective date. An additional license fee is required.

The form of license shall contain information and statements prescribed by IC 25-18-1-6. It shall be issued in duplicate either in typewritten or printed form. The clerk shall retain one copy.

The clerk shall endorse upon each application the date of its filing and preserve it as a public record of the office. A book shall be kept and properly indexed, showing the name of the applicant, date of application, the descriptive name of the proposed sale, place where sale is to be conducted, date of issuance of license and effective date thereof.

No license required by the act shall be issued if such business was established or relocated for the ultimate purpose of holding such sale. It shall be presumed by the clerk that any business maintained at the sale location less than six months was established for such ultimate purpose. The applicant may rebut such presumption to the satisfaction of the clerk when the application is filed. [IC 25-18-1-14]

The clerk is charged with the duty to see that the provisions of the act are strictly complied with and to report for prosecution all cases of violation of or refusal or neglect to comply with such provisions. It is unlawful for any licensee to refuse any information or facts in connection with the sale for which a license was issued which the clerk may require for the enforcement of the act. [IC 25-18-1-18]

LICENSE FEE - DISTRESS SALES

Inventories of \$25,000.00 or less, the fee is \$40.00; inventories of \$25,000.00 to \$50,000.00, \$65.00; \$50,000.00 to \$75,000.00, \$100.00; \$75,000.00 and over, \$150.00. [IC 33-32-5-2]

COMMISSION ON PUBLIC RECORDS

A commission is created in each county of the state to be known as the commission of public records of _____ county. The commission consists of the judge of the circuit court, the president of the board of county commissioners, the county auditor, the clerk of the circuit court, the county recorder, the superintendent of schools of the school district in which the county seat is located and the city controller of the county seat city, and if there be no such city controller then the clerk-treasurer of such county seat city or town, shall be a member of the commission. The commission shall elect one of the members to be chairman and the clerk shall be the secretary. The members shall serve without compensation and shall receive no reimbursement for any expense. [IC 5-15-6-1]

DUTIES OF THE COUNTY COMMISSION OF PUBLIC RECORDS

According to IC 5-15-6-2, as amended by Acts of 1979, Public Law 40, Section 17, the county records commission is to determine:

- (1) Which public records, if any, are no longer of official or historical value.
- (2) Which public records are of current official value and should be retained in the office where they are required to be filed.
- (3) Which public records are of official value but are consulted and used so infrequently that they are no longer of appreciable value to the officer with whom they are required to be filed.
- (4) Which public records are of no apparent official value but which do have historical value.
 - (A) Records that have no official or historical value can be ordered destroyed.
 - (B) Records of apparent official value should continue to be kept by the office holder until their official value ceases. (e.g., all records three (3) years, tax records ten (10) years, canceled checks six (6) years, claims three (3) years. See pages 11 through 16 of the Guide for Preservation and Destruction of Public Records, issued 1992, available through the Indiana Commission on Public Records, Indiana Government Center South, Room W472, 402 West Washington Street, Indianapolis, Indiana 46204.)
 - (C) Records of official value infrequently used can only be transferred to the Indiana State Archives. (See Page 4, Guide . . . ; IC 5-15-6-5)
 - (D) Records of no apparent official value, but deemed by the commission to have historical value, can only be transferred to the Indiana State Archives. (See Page 15, Guide . . . ; IC 5-15-6-6)

The records in the first category, i.e., that have no apparent official or historical value, may be destroyed after sixty days during which time notification to destroy is given to the local historical society, who has the first thirty (30) days to respond. THIS APPLIES ONLY TO RECORDS ORDERED TO BE DESTROYED HAVING NO APPARENT OFFICIAL OR HISTORICAL VALUE. If neither the local historical society nor the State Commission on Public Records waives its right to acquire the records, then the Secretary will inform the office holder, via the PR1 form, that the office holder may proceed with the destruction. (See Page 11, Guide . . .; IC 5-15-6-7)

Destruction is not specified in the law. It can be achieved through burning, shredding, or burying in a landfill with sufficient dirt to cover the records to prevent them from being retrieved by anyone. Confidential records must be burned or otherwise made impossible to reconstruct.

No financial records or records relating thereto shall be destroyed until an examination and audit of such records by the State Board of Accounts has been completed, a report filed and any exceptions set out in such report satisfied.

RAILROAD POLICE

Each police officer commissioned by the Governor shall, before entering upon his/her duties, take and subscribe an oath of office, which shall be endorsed upon his/her commission, and such commission, with the oath, shall be recorded in the office of the clerk of the circuit court of the county in which such police officer resides. [IC 8-3-17-2]

When the services of the police officer are terminated by the company, it shall file a notice to the effect, under its corporate seal, with the clerk where the commission is recorded. The notice of termination must be noted on the margin of the record where the commission is recorded. The company shall also file a notice with the Secretary of State. Thereupon, the powers of such police officer shall cease and terminate. [IC 8-3-17-8]

The clerk will collect a fee of one dollar (\$1.00) from the police officer for recording the commission and oath. Such fee is the property of the county and not the property of the clerk.

USE OF JET BLACK INK

The clerk of the circuit court, county auditor and county recorder shall use permanent, jet-black, non-fading ink when preparing official records in longhand. A person who violates this subsection commits a Class C infraction. [IC 36-2-17-2]

LIEN FOR ATTORNEY FEES

Attorneys may file their intention to hold a lien for their fees in writing, entered upon the docket wherein a judgment is recorded, within sixty (60) days after rendition thereof. If an appeal is taken on the judgment, such lien may be entered within sixty (60) days from the date the opinion of the higher court is recorded in the office of the clerk of the trial court or within sixty (60) days from the date of final judgment where the cause is reversed and retried. [IC 33-43-4-2]

FILING AND RECORDING OFFICIAL'S BONDS

Bonds of elected or appointed public officials, except those of the county recorder, deputy or employees thereof, are required to be filed and recorded in the office of county recorder in the county of residence of such official. The bonds of the county recorder, deputy or employee are required to be filed and recorded in the office of clerk of the circuit court. [IC 5-4-1-5.1]

WHEN JUDGMENTS ARE FINAL

A judgment is final when it is entered of record in the order book of the court and signed by the judge thereof and time has elapsed for an appeal to a higher court.

A final judgment is one that finally decides and determines the matter under investigation, insofar as the court has power to dispose of it. (London v. Elice 195 Ind. 507)

A final judgment or decree must terminate the litigation on the issues as between parties. (Wall v. Muncie 201 Ind. 170)

A final judgment or decree must end the litigation under the pleadings between all the parties, so that on affirmance the trial court need only execute it. (Enmier v. Blaze 203 Ind. 303)

The sustaining of a motion to dismiss a case constitutes a final judgment. (McGraw v. Nickey, 47 App. 159; Wall v. Hutton, 92 App. 705)

WHEN JUDGMENTS ARE NOT FINAL

A judgment is not final unless all the issues of law and fact are determined, and the case completely disposed of, so far as the court has power to dispose of it. (Gray v. Gray 202 Ind. 485)

If a judgment is rendered as to some of the parties only, and at a later date, judgment is rendered as to the remaining parties, the judgment is not final until the latter date. (Ragle vs. Dedman, 45 App. 693)

A verdict and judgment against plaintiff and for part only of defendants is not a final judgment from which an appeal lies. (Brown v. Pasko, 102 App. 202)

HABEAS CORPUS PROCEEDING

A habeas corpus proceeding is not a civil action and does not require payment of the filing fee.

The original purpose was for the release of persons illegally or forcibly imprisoned. It is a writ of liberty. It has been held that the provisions of the civil code, in relation to the trial of civil cases, are not applicable to the hearing by court or judge of a habeas corpus proceeding. In the case of Garner v. Gordon, 41 Ind. 92, our supreme court held: "a proceeding by habeas corpus is not a civil action within the meaning of the section of the code authorizing a change of venue; nor is it a civil case within the meaning of section 20 of the bill of rights in the State Constitution of 1851, authorizing a trial by jury. The hearing and determination of the cause is summary under the statute." See McGlennan v. Margowski, 90 Ind. 150; Milligan v. The State ex rel. 97 Ind. 355; McDonald v. Short, 190 Ind. 338.

RECORDING APPOINTMENT OF CITY COURT JUDGE

Whenever any person is appointed as a city court judge by the proper authority, a certified copy of the appointment shall be sent by the appointing authority to the clerk of the circuit court of the county wherein the city is located. The appointment shall be recorded upon the order book of the circuit court. Such record shall authorize the clerk to certify that such judge is the duly appointed, qualified and acting judge of the city court for which the judge was appointed. [IC 33-38-3-1; IC 33-38-3-2]

ACTING TOWNSHIP TRUSTEE

Upon filing a petition by not less than twenty-five (25) resident freeholders of any township alleging that the duly elected, qualified and acting township trustee is incapable of performing the duties of that office due to mental or physical incapacitation, the clerk shall issue a summons to be served upon such trustee to be returnable not less than ten (10) days from date of issue. Immediately following the return date as set out in the summons, a hearing shall be held by the judge of the court on the matter therein alleged. Upon hearing the evidence and being duly advised, the court shall enter its finding and judgment.

If the court or judge thereof determines the elected trustee is incapable of holding such office, the clerk shall certify a copy of the judgment to the board of county commissioners who shall within five (5) days appoint a resident of the township to act as trustee during the period of incapacitation. [IC 36-6-4-16]

Since the hearing and determination of the action seems to be summary, it is our opinion that a filing fee is not required at the time of filing. Neither should any other items of costs be taxed, charged and collected upon final determination.

MOTOR VEHICLES - REVOCATION AND SUSPENSION OF LICENSE - REPORT OF CONVICTION AND JUDGMENT

A court shall forward to the bureau a certified abstract of the record of the conviction of a person in the court for a violation of a law relating to motor vehicles.

If in the opinion of the court a defendant should be deprived of the privilege to operate a motor vehicle upon a public highway, the court shall recommend the suspension of the convicted person's current driving license for a fixed period established by the court not exceeding one (1) year.

The bureau shall comply with the court's recommendation.

At the time of a conviction referred to in the first paragraph or IC 9-30-5-7, the court may obtain the defendant's current driving license and return the license to the department.

The abstract referred to in the first paragraph must be in the form prescribed by the bureau and, when certified, shall be accepted by an administrative agency or a court as prima facie evidence of the conviction and all other action stated in the abstract. [IC 9-25-6-8]

REPORT OF JUDGMENT

The clerk of a court, or the judge of a court that has no clerk, shall forward to the bureau a certified abstract of the record of a judgment for damages if the rendering and nonpayment of the judgment requires the bureau to suspend or revoke the current driving license in the name of the judgment debtor under this article. The abstract shall be forwarded to the bureau immediately upon the expiration of thirty (30) days after the judgment becomes final and has not been stayed or satisfied, as shown by the records of the court. [IC 9-25-6-9]

FAILURE TO REPORT CONVICTION AND JUDGMENTS

Any person required to report an abstract of the record of a conviction or judgment as required by the act who willfully fails or neglects to do so, commits a Class C infraction. [IC 9-14-1-6]

DUTY OF CLERK ON COURT REVIEW - CHANGE OF VENUE - APPEAL

On the filing of a petition under IC 9-30-4-10 for judicial review, the cause shall be docketed by the clerk of the court in the name of the petitioner against the bureau. The issues shall be considered closed by denial of all matters at issue without the necessity of filing any further pleadings. Changes of venue from the judge or from the county shall be granted either party under the law governing changes of venue in civil causes. The bureau is not liable or taxable for any costs in any action for judicial review.

An appeal from the judgment of the court may be prosecuted by either party as in civil causes, provided a notice of intention to appeal is filed with the court within fifteen (15) days from the date of the judgment, together with an appeal bond conditioned that the appellant will duly prosecute the appeal and pay all costs if the decision of the court having appellate jurisdiction over the appeal is determined against the appellant with surety approved by the court. A bond is not required of the bureau.

IC 4-21.5 does not apply to this chapter. A court does not have jurisdiction to review any order or act of the bureau except as provided for in this chapter, any other law to the contrary, regardless of the date of enactment of the other law. [IC 9-30-4-11]

COSTS TO BE PAID BY PETITIONER - JUDICIAL REVIEW

A petition for judicial review under IC 9-30-10 must:

- (1) be verified by the petitioner;
- (2) state the petitioner's age, date of birth, place of residence, and driver's license identification number;
- (3) state the grounds for relief and the relief sought;
- (4) be filed in the county in which the petitioner resides; and
- (5) be filed in a circuit, superior, county, or municipal court.

A summons in an action under this chapter shall be issued and served in the manner provided for civil actions. The prosecuting attorney of the county in which the petition is filed and the bureau shall be served with the summons and a copy of the petition.

In an action under this chapter, the petitioner must bear the burden of proof by a preponderance of the evidence to prevail.

IC 9-30-3-15 and the rules of trial procedure apply in a proceeding under this chapter. However, a responsive pleading is not required when a petition for review has been filed, and a person is not entitled to a change of venue from the county.

The prosecuting attorney of the county in which the petition is filed shall represent the state in relation with the bureau.

Court costs shall be assessed and paid by the petitioner at the time of filing in an amount equal to the costs assessed in the enforcement of infractions. However, a petitioner who has the petitioner's driving privileges reinstated under section 8 of this chapter is entitled to a refund of all costs paid. [IC 9-30-10-7]

REORGANIZATION OF SCHOOLS - ELECTIONS - PETITIONS

After the Indiana State Board of Education has approved a comprehensive plan or partial plan for reorganization of school corporations as submitted to it by a county committee, the state board shall promptly in writing, by certified United States mail with return receipt requested, give a notice of such approval to the chairman of said county committee submitting the plan and the judge of the circuit court of the county from which the county committee was appointed.

Thereafter, any community school corporation proposed by the plan may be created either by petition as set out in this section, by election as provided in IC 20-4-1-21, or under the terms of IC 20-4-1-22.

At any time after the receipt of such plan by the county committee, before or after the election described in IC 20-4-1-21, any such community school corporation may be created by a petition signed by fifty-five percent (55%) or more of the registered voters residing within the boundaries of the community school corporation, determined in the manner set out in this section, and filed by any signer or by the county committee with the clerk or clerks of the circuit court or courts of the county or counties where such voters reside. Such petition shall state that the signers request the establishment of a community school corporation and shall contain the following information:

- (1) The name of the proposed community school corporation.
- (2) A general description of the boundaries as set out in the plan.
- (3) The number on the board of school trustees.
- (4) The manner in which the permanent board of school trustees, and the interim board if covered in the plan, shall be elected or appointed.
- (5) The compensation, if any, of the members of the permanent and interim board of school trustees.
- (6) The disposition, if any, of assets and liabilities of each existing school corporation which is included in the proposed community school corporation and has been divided.
- (7) The disposition of school aid bonds, if any.

Such petition shall show therein the date on which each person has signed the petition and their residence on such date. The petition may be executed in several counterparts, the total of which shall constitute the petition authorized by this subsection. Each such counterpart shall have attached thereto the affidavit of the person circulating said counterpart that each signature appearing on such counterpart was affixed in his presence and is the true and lawful signature of the person who made such signature. Each signer on the petition shall be privileged prior to, but shall not be entitled after, such filing with the clerk of the circuit court, to withdraw his name from the petition. No names shall be added to the petition after the petition has been filed with any such clerk.

After the receipt of the petition, such clerk shall make a certification under his hand and seal of his office as to:

- (1) the number of persons signing the petition;
- (2) the number of such persons who are registered voters residing within the boundaries of the proposed community school corporation or that part of such school corporation located within their county, as disclosed by the voter registration records in the office of the clerk or the board of registration of the county, or wherever such registration records may be kept;

- (3) the number of registered voters residing within the boundaries of the proposed community school corporation or that part of such school corporation located within their county, as disclosed in the records mentioned in subdivision (2); and
- (4) the date of the filing of such petition with him/her.

In case a proposed community school corporation includes only part of a voting precinct, the clerk of the circuit court shall ascertain from any public records, data, or by any other means, including but not limited to assistance from the committee, the number of registered voters resident therein.

Such certification shall be made by each such clerk within thirty (30) days after the filing of the petition, excluding from the calculation of such period any time during which the registration records are unavailable to such clerk, or within any additional time as is reasonably necessary to permit such clerk to make such certification. In certifying the number of such registered voters, the clerk shall disregard any signature on such petition not made within ninety (90) days immediately prior to the filing of the petition with the clerk as shown by the dates set out in the petition. Such clerk shall establish a record of his/her certification in his/her office and shall return his/her certification thereon to the county committee. If the certification or combined certifications received from the clerk or clerks disclose that the petition has been signed by fifty-five percent (55%) or more of the registered voters residing within the boundaries of the community school corporation, the county committee shall publish in two (2) newspapers of general circulation within the boundaries of the community school corporation a notice stating that the steps necessary to the creation and establishment of the community school corporation have been completed, and setting forth the number of registered voters residing within the boundaries of the community school corporation who signed the petition and the number of registered voters residing within the boundaries of the community school corporation.

The community school corporation shall be created and come into being on July 1 or January 1 following the date of publication of said notice, whichever date is the earlier. In the event any public official shall fail to do their duty within the time prescribed in sections 20 through 24 of this chapter, this omission shall not invalidate the proceedings taken under this chapter. No action to contest the validity of the formation or creation of a community school corporation under the provisions of this section, to declare it has not been validly formed or created or is not validly existing or to enjoin its operation shall be instituted at any time later than the thirtieth day following publication of said notice. [IC 20-4-1-20]

If a proposal for the formation of a community school corporation is rejected by the voters at the election provided for in this chapter, the county committee shall exercise one (1) of the following options:

- (1) Devise a new plan of reorganization deemed more acceptable to the electors of the territory affected. This new plan shall be submitted to the state board for its approval within six (6) months from the date of such election subject to the same conditions and requirements as to extensions of time and otherwise provided in this chapter for adoption and approval of the rejected plan. If the new plan is approved by the state board, the same procedures provided in this chapter for the creation of a community school corporation shall be followed.
- (2) The county committee may direct the county election board or boards to resubmit the same plan, rejected by the voters, at a special election to be held not later than six (6) months following such prior election on such plan, provided that where a primary or general election for state offices is to be held within six (6) months of such prior election, such special election shall be held in conjunction with such primary or general election. Notice by publication for the holding of such special election shall be given by the judge on request of the county committee, and the election shall be held in the same manner required for the holding of special election under section 21 of this chapter, and all action by all officials concerned necessary for the conducting of such special election shall be taken as required in such section 21 of this chapter. [IC 20-4-1-23]

Since the cost of conducting the special school election is to be paid by the school corporation, it is our opinion such expense will be paid by the county in the first instance and reimbursement made thereafter by the school corporation from current operating funds not otherwise appropriated and without appropriation therefor.

FILING EXCEPTIONS TO APPRAISERS REPORT IN CONDEMNATION PROCEEDINGS

Any person, plaintiff or defendant, aggrieved by the assessment of damages, benefits, compensation or value of property fixed by appraisers in proceedings for the condemnation or appropriation of property for public use, may file written exceptions thereto in the office of clerk, where the cause is pending, within ten (10) days after the filing of such report. The cause shall thereafter proceed to issue, trial and judgment as in civil actions. [IC 32-24-6-1] [See Also IC 32-24-1-11]

PAYMENT OF DAMAGES TO ONE OR MORE DEFENDANTS

After twenty (20) days have passed following the filing of the report of the court appointed appraisers, and if the plaintiff has paid the amount of damages assessed to the clerk, any one or more defendants may file written requests for payment of their proportionate share of said damages held by the clerk. The requester shall furnish sufficient copies of the request for service upon the plaintiff and all other defendants not joining in the request.

The defendant or defendants shall be permitted to withdraw and receive their proportionate share of the damages subject to:

1. The request being verified under oath; shall state the amount of the proportionate share of damages the defendants are entitled; the interest of each defendant; the highest offer made by the plaintiff to each defendant.
2. Upon filing of such request for withdrawal, the clerk shall forthwith issue a notice to the plaintiff and all defendants of record not joining in the request for payment, stating therein the names of the parties, cause number, the filing of the request for payment, notice to appear on a date fixed by the court, and show cause if any they have why the amounts requested should not be paid over by the clerk to those making the request. If any defendant not requesting payment is a nonresident of the state, or if the defendant's name or address is unknown, publication and proof of the notice and request for payment shall be made as provided by IC 32-24-1-4.
3. Upon hearing duly held, the court shall determine and order payment by the clerk to the defendants requesting the same. From such order an appeal may be taken to the supreme court.

4. The clerk shall not pay any part of the damages to any defendant until the defendant requesting the payment shall file a written undertaking, with surety approved by the court, for the repayment to the plaintiff of all amounts received in excess of the amount awarded as damages by the judgment of the trial court.

The court may waive the requirements of a separate surety as to any defendant who is a resident freeholder of the county in which the cause is pending if he/she owns real property in this state, liable to execution, not included in the real property appropriated by the plaintiff, and equal in value to the amount by which the damages to be withdrawn, exceed the amount offered as stated in the request or determined by the court if the plaintiff has disputed such statement of the offer. The clerk shall record the undertaking in the order book and enter it in the judgment docket. Such written undertaking shall be a lien upon all the real estate owned by the obligors in each county of this state in which the plaintiff shall cause a certified copy to be recorded.

5. The receipt from the clerk by any defendant of his/her proportionate share of the damages awarded by appraisers, as determined by the court upon written request and hearing, shall not operate or be considered as a waiver of any exceptions filed by such defendant to the assessment of damages by the appraisers.
6. In any trial of exceptions, the court or jury shall compute and allow interest at the rate of eight percent (8%) per annum on the amount of the defendant's damages from the date plaintiff takes possession of the property; but in no event shall any interest be allowed on any amount of money paid by the plaintiff to the clerk of the court after the same is withdrawn by the defendant. [IC 32-24-1-11]

PAYMENT OF DAMAGES - POSSESSION OF PROPERTY - APPEAL - CERTIFICATE FILED WITH AUDITOR - TRANSFER ON TAX RECORDS

If the plaintiff pays to the clerk of the circuit court the amount of damages thus assessed, the plaintiff may take possession of and hold the interest in the property so acquired, for the uses stated in the complaint, subject to the appeal provided for in section 8 of this chapter. But the amount of the benefits or damages shall be subject to review as provided in section 11 of this chapter.

Upon payment by the plaintiff of the amount of the award of the court appointed appraisers, the plaintiff shall file or cause to be filed with the auditor of the county in which the property is located a certificate, certifying the amount paid to the clerk of the court and including the description of the property being acquired. The auditor of the county shall then transfer the property being acquired to the plaintiff on the tax records of the county. [IC 32-24-1-10]

WHEN FILING FEE IS REQUIRED

If exceptions to the report are filed by a person other than one acting in behalf of the state or any municipality specified in the act, such other exceptor or exceptors will be required to pay the filing fee. It is the exceptor who institutes the action. Although either party aggrieved may file such exceptions, the state or any of its subdivisions are exempt from payment of the filing fee. [1933 Attorney General Opinion]

DEPOSIT OF COMPENSATION BY AUDITOR

Any employee of any county may make written request to have any compensation due the employee from the county to be deposited to the employee's account in any bank or trust company specified in the request. [IC 5-10-9-2]

NOTICE OF CONVICTION - MOTOR VEHICLE OWNERS

Whenever a person is convicted of a traffic offense who is not the owner of the motor vehicle, the court shall notify such owner within seven days of the time of conviction. The notice shall be by first class mail, postage prepaid, and addressed to the owner of the vehicle.

The notice shall inform the owner: The name and address of the person convicted; name and address of the owner of the motor vehicle; the offense upon which the conviction was made; date of arrest and location of the place of the offense; number of license plate, operator's or chauffeur's license number of person convicted; date of conviction and name of court. [IC 9-30-3-14]

DELINQUENT TAX JUDGMENTS

Delinquent personal property installments shall be listed in a record by the county treasurer and filed with the clerk of the circuit court in accordance with the provisions of IC 6-1.1-23-9. The treasurer shall swear to the accuracy of the record before the clerk of the circuit court. Upon depositing the record in the clerk's office, the amounts of the delinquent taxes, penalties and costs stated therein shall constitute a debt against the person named and shall have the same force and effect as judgments. Such judgments shall bear the same rate of interest as other judgments from the date of deposit in the clerk's office.

The treasurer shall file a praecipe for the issuance of an execution with the clerk after notifying the taxpayer at least ten (10) days prior thereto.

Provision is made in IC 6-1.1-23-11 of said act for the treasurer to file a certificate of judgment with treasurers of other counties where additional property may be located. The receiving treasurer shall cause the judgment to be indexed by the clerk in the judgment docket in the same manner as if entered originally and shall proceed to cause execution to be issued.

SETTING ASIDE JUDGMENT - GROUNDS

Any judgment entered as provided in IC 6-1.1-23-9 or IC 6-1.1-23-11 shall be set aside only for one (1) of the following reasons:

- (1) The person against whom the judgment was entered was not liable for the delinquent taxes, penalties, and collection expenses for which the judgment was entered.
- (2) The delinquent taxes, penalties, and collection expenses have been paid either in whole or in part.
- (3) The required written demand was not given in the manner prescribed in section 1 of this chapter.
- (4) The person against whom the judgment was entered is deceased, as evidenced by a certificate of death.

- (5) The corporation against whom the judgment was entered has been formally dissolved or is no longer in business.
- (6) The judgment is uncollectible as a result of bankruptcy.
- (7) The county treasurer has exhausted all reasonable efforts to collect the delinquent taxes, penalties, and collection expenses for the period specified in IC 6-8.1-8-2(f) without success.

For purposes of subdivision (2), if only part of the items have been paid, the judgment may be set aside only in the amount of the payment.

A judgment may be set aside under this section only under a finding entered or record by a court which has jurisdiction. [IC 6-1.1-23-12]

SATISFACTION OF JUDGMENT

Payment of delinquent tax judgments and interest shall be made to the county treasurer. The county treasurer shall on a daily basis enter a satisfaction of all judgments paid in the record of delinquent tax judgments maintained in the office of the clerk of the circuit court. Such treasurer shall apply the amount so paid to the delinquent taxes, penalties and costs for which the judgment was entered. [IC 6-1.1-23-13]

EXECUTE DEED - CITIES AND TOWNS

The clerk is required to execute a deed conveying title of real property to the unit of government for the benefit of its department of redevelopment upon direction of the judge of the circuit or superior court when such real property is acquired by proceedings in the exercise of eminent domain. [IC 36-7-14-20]

TITLE IV-D INCENTIVE PAYMENTS

1. These funds must be used to supplement other funds used for Title IV-D program activities. [IC 12-17-2-26]
2. Incentive Distributions which will carryover to the next year and may continue to be spent without appropriation.
3. Claims should be filed, advertised and allowed in the same manner as other county claims.
4. If salary changes are contemplated, we would expect strict adherence to the county council's authority to fix and change compensation of county officers and employees as enumerated in IC 36-2-5-3 and IC 36-2-5-13.

In accordance with an unofficial opinion of the Attorney General dated December 6, 1982.

JURY FEES

Jurors of circuit, superior, county, probate courts, and members of a grand jury are entitled to fees equal to the mileage rate paid to state officers for each mile necessarily traveled to and from the court and the payment at the rate of fifteen dollars (\$15) for each day the juror is in actual attendance in court until the jury is impaneled, and forty dollars (\$40) for each day the juror is in actual attendance after impaneling and until the jury is discharged.

County council may adopt an ordinance to pay from county funds a supplemental fee in addition to the aforementioned fees.

A prospective juror who is summoned for jury duty and who reports to the summoning court on the day specified in the summons is in actual attendance on that day for the purposes of this section. [IC 33-37-10-1]

CLERK TO FORWARD CLAIMS

The clerk shall note juror fees when they are claimed and forward the claims to the county auditor or city or town fiscal officer.

The clerk is not entitled to a fee for providing an affidavit or other proof of attendance to a juror. The county auditor or city or town fiscal officer shall disburse jury fees. [IC 33-37-10-4]